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*Attorneys for Plaintiffs Perseus Distribution, Inc.
 and Perseus Books, L.L.C.*

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PERSEUS DISTRIBUTION, INC. and
 PERSEUS BOOKS, L.L.C.,

Plaintiffs,

v.

CF COMMUNICATIONS, LLC
 d.b.a TELEKENEX, INC.,

Defendant.

CV 08

0044

COMPLAINT FOR VIOLATIONS OF THE
 TELECOMMUNICATIONS ACT,
 47 U.S.C. § 251, et seq.

Plaintiffs Perseus Distribution, Inc. ("Perseus Distribution") and Perseus Books, L.L.C.
 ("Perseus") (collectively, "Plaintiffs" or "Perseus Distribution/PGW"), by and through their
 undersigned counsel, hereby bring the following Complaint against Defendant CF Communications,
 LLC d.b.a Telekenex, Inc. ("Telekenex") for its conduct in improperly holding hostage Plaintiffs'

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 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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1 business telephone numbers and refusing to permit Plaintiffs to "port" those numbers to a new
2 carrier in violation of the Federal Telecommunications Act Local Portability Rules.

3 In support thereof, Plaintiffs make the following allegations upon personal knowledge and
4 upon information and belief.

5 **THE PARTIES**

6 1. Plaintiff Perseus Distribution, Inc. is a Delaware corporation, a/k/a Publishers Group
7 West and PGW, with its principal place of business located at 387 Park Avenue South, New York,
8 NY 10016-8810.

9 2. Plaintiff Perseus Books, L.L.C. is a Delaware limited liability company, d/b/a The
10 Perseus Books Group, with its principal place of business at 387 Park Avenue South, New York,
11 NY 10016-8810.

12 3. Defendant CF Communications, LLC is a Nevada limited liability company d.b.a.
13 Telekenex, Inc. with its principal place of business at 3221 20th Street, San Francisco, California
14 94110. Telekenex is a telecommunications provider providing local exchange services.

15 **JURISDICTION AND VENUE**

16 4. This Court has subject matter jurisdiction pursuant to 47 U.S.C. § 207, in that this is
17 an action for violation of the Telecommunications Act, 47 U.S.C. §§ 251 *et seq.*

18 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part
19 of the events giving rise to the claims occurred in this District.

20 **FACTUAL ALLEGATIONS**

21 6. Perseus Distribution/PGW is a book distributor, with numerous customers (authors
22 and small publishers) who place orders by phone and fax. Perseus Distribution recently purchased
23 certain of PGW's business assets, including the Publishers Group West and PGW trade names,
24 telecommunications equipment, and other assets, in a transaction approved by the U.S. Bankruptcy
25 Court for the District of Delaware effective on or about September 28, 2007.

26 7. For approximately the past 10 years, PGW has used the following telephone and fax
27 numbers in the conduct of its business:

1 510 528 1444 Main Phone
2 510 528 3444 Main Fax
3 510 528 5511 Sales Fax
4 510 528 7211 Executive Fax
5 510 528 8167 Credit Fax
6 510 528 9555 Marketing Fax
7 510 558 0156 Publisher Services Fax
8 510 558 0422 Human Resources Fax
9 800 261 7503 IT Dial In Pool
10 800 788 3122 Customer Service line
11 (together the "PGW Phone/Fax numbers").

12 8. During this period of time, significant value in the PGW Phone/Fax numbers has
13 accumulated -- they are known and recognized by customers as being uniquely associated with
14 Perseus Distribution/PGW's business.

15 9. From 2003 to 2007, Defendant Telekenex, Inc. has been the local exchange carrier
16 for the PGW Phone/Fax numbers. In November 2007, Perseus Distribution/PGW notified
17 Telekenex of its intent to change carriers. Perseus Distribution/PGW made this decision because of
18 the poor telephone service by Telekenex, including instances of service interruption.

19 10. At no time prior to December 14, 2007, the date of the scheduled switch, did
20 Telekenex indicate that it would refuse to comply with Perseus Distribution/PGW's lawful request.
21 Thereafter, on December 14, 2007 Perseus Distribution/PGW switched local carriers from
22 Telekenex to TelePacific Communications.

23 11. However, on the afternoon of December 14, 2007, Telekenex -- for the first time --
24 notified Perseus Distribution/PGW that it would not release the PGW Phone/Fax numbers to
25 TelePacific Communications stating that it intended to demand an "early termination fee."
26
27
28

1 12. Perseus Distribution/PGW made the decision to switch carriers based in part on
2 Perseus Distribution/PGW's understanding that it had the legal right to "port" the PGW Phone/Fax
3 numbers to its new carrier.

4 13. Perseus Distribution/PGW immediately notified Telekenex that its action in holding
5 hostage the PGW Phone/Fax numbers was unjustified and would cause serious harm to the Perseus
6 Distribution/PGW business. Telekenex responded by saying that it would not release the numbers
7 unless Perseus Distribution/PGW paid a so-called "early termination fee" of \$120,000.

8 14. Perseus Distribution/PGW is unaware of any valid basis for this demand for an early
9 termination fee. Additionally Perseus Distribution/PGW understands that even if a fee is owed,
10 Telekenex may not refuse to port the numbers until this fee is paid.

11 15. Telekenex continues to refuse to allow Plaintiffs to port the PGW Phone/Fax
12 numbers to their new carrier. This unjustified action is causing harm to Perseus
13 Distribution/PGW's business, including customer confusion, loss of sales, and most importantly, it
14 is devaluing the numbers and other assets purchased by Perseus as part of the September 28, 2007
15 bankruptcy sale described in paragraph 6, *supra*.

16 16. Currently, if a customer attempts to use any of the PGW Phone/Fax numbers, the
17 customer gets only a busy signal.

18 17. Notwithstanding Perseus Distribution/PGW's repeated requests that Telekenex
19 release the PGW Phone/Fax numbers, Telekenex has refused or failed to respond.

20 **COUNT I**

21 **(Violation of the Telecommunications Act)**

22 18. Plaintiffs incorporate herein all factual allegations made above.

23 19. The Telecommunications Act, 47 U.S.C. § 251 mandates number portability in order
24 to promote competition in the telecommunications sector.

25 20. Telekenex is a local exchange carrier that provides telephone exchange service
26 within the meaning of the Act. Accordingly, Telekenex is obligated to provide number portability
27 under the Telecommunications Act.

1 21. Telekenex has breached its duties under the Telecommunications Act and
2 implementing regulations by refusing to release the PGW Phone/Fax numbers and allow another
3 carrier to provide service for these numbers.

4 22. As a direct and proximate result of Telekenex's acts alleged above, Plaintiffs have
5 suffered damages and are entitled to recover reasonable attorneys fees.

6 23. In addition, Plaintiffs are suffering immediate and irreparable harm in the form of
7 business interruption and the inability to use the numbers which are associated with Plaintiffs'
8 business.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs demand Judgment against Defendant:

- 11 a. Granting them compensatory damages;
- 12 b. Awarding their disbursements, costs, and expenses, including reasonable
13 attorneys' fees;
- 14 c. Granting injunctive relief as equity demands, including entry of a temporary
15 restraining order and/or preliminary injunction that would require Telekenex to immediately release
16 the PGW Phone/Fax numbers to Plaintiffs for use with their replacement carrier; and
- 17 d. Granting such other and further relief as the Court deems just and proper.


18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs hereby demand trial by jury for all claims.

20 Dated: January 4, 2008

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23 By:


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